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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re KAYDEN A. et al., Persons Coming
Under the Juvenile Court Law.

B238836
(Los Angeles County
Super. Ct. No. CK60577)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

NORMA L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Marguerite D. Downing, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Kimberly Roura, Associate County Counsel, for Plaintiff and Respondent.

Norma L. (mother) appeals the finding of the juvenile court that her twin children, Kayden A. and Nevaeh A., are dependents as described by section 300, subdivision (b), of the Welfare and Institutions Code¹ based on her conduct. We conclude the finding is supported by substantial evidence, and so affirm.

SUMMARY OF THE CASE

Mother gave birth to Kayden and Nevaeh in October 2011. Mother tested positive for amphetamine at the time of the births, although the twins tested negative and exhibited no withdrawal symptoms. Mother admitted that she had a long history of methamphetamine abuse, and had five other children who did not live with her; her ex-husband (Javier M.) was awarded custody of their two children in a family law court, while the paternal grandparents of her three children with her former boyfriend, Angel S., were granted legal guardianship by the probate court. Mother could not account for the positive test result.

Prior to the twins' births, mother had been in a drug treatment program ordered as a result of her January 2011 arrest for possession of methamphetamine. Father also had a recent arrest for possession of methamphetamine.

FACTUAL AND PROCEDURAL BACKGROUND

Mother's methamphetamine abuse dates to 2005, when she was 25. At that time, she and her newborn, Joseph S., tested positive for methamphetamine. A section 300 petition was sustained, the infant was detained, and mother participated in reunification services. Jurisdiction was terminated in July 2007. Mother and Angel had two additional children, Ashley S. in 2006 and Alexa S. in 2007.

Mother reported that she relapsed in 2009 and started using drugs about twice a month. Angel S. was incarcerated at this time. Mother used drugs for five months before entering a residential drug treatment program. She sent the three children who were then

¹ All further statutory references are to the Welfare and Institutions Code.

in her custody to live with their paternal grandparents, where they continue to live under legal guardianship. Mother voluntarily participated in this treatment program for six months.

Mother and father met in November 2010. Mother relapsed in December of that year, and was arrested for possession of methamphetamine in January 2011. Mother became pregnant with the twins in February 2011. She denied using any illegal drugs while pregnant, and did not know why she tested positive for amphetamines in the hospital. As part of a Proposition 36 drug treatment sentence ordered by the criminal court, mother had entered a drug treatment program on August 23, 2011, and since that time had drug tested every week, and participated in Narcotics Anonymous meetings and parenting classes. All of mother's weekly drug tests were negative, including a test two days before the twins' births. Mother's counselor at her drug treatment program stated that mother was one of his model clients and had been in compliance with the program. Mother participated in an on-demand drug test, three days after the twins' births, which was negative for amphetamines.

Father had been arrested on August 19, 2011 on five outstanding warrants, and upon arrest, was found in possession of three baggies containing suspected methamphetamine. He told the arresting officer that he used "speed" every month.

DCFS detained the twins on October 20, 2011. On October 25, 2011, DCFS filed a petition under section 300, subdivision (b) alleging that "mother's use of illicit drugs endangers the children's physical health and safety and places the children at risk of physical harm and damage." At the detention hearing conducted the same day, the court found a prima facie case for detaining the minors, stating as to mother that she had a long history, was in a drug treatment program, and was testing positive for drugs. The court ordered a Pre-Release Investigation (PRI), to include drug test results, and indicated that the DCFS would have discretion to release the twins to their parents following a "track record of clean drug tests, not just one." The court set the PRI hearing for November 9, 2011 and ordered random drug testing.

Mother submitted to two drug tests between the detention hearing and the PRI hearing, both of which were negative. At the time of the latter hearing, mother was enrolled in an outpatient treatment program and attending group sessions. The minors' counsel joined mother in requesting that the twins be released to her, while the DCFS opposed that request. After observing that it was a critical time for bonding between mother and her babies and that mother was testing clean and receiving treatment, the court released the twins to mother over the Department's objection, on the condition that mother continue to provide random negative drug tests.

The adjudication hearing was held on January 17, 2012. The documentary evidence included a January 3, 2012 letter from mother's drug treatment program, which reported that mother attended 16 group sessions and missed 3; attended 3 individual sessions, missing none; attended 28 12-step meetings and missed 4; and submitted to 7 drug tests and missed one. All drug tests were negative. The letter stated mother "actively participates in all group activities, . . . displays a willingness to change, to want to better herself and is taking positive steps to achieve these goals." Also in evidence were the Detention and Jurisdiction/Disposition Reports, two Last Minute Information reports, and the results of the recent drug tests.

In arguments to the court, DCFS emphasized mother's long drug history, and that there had been no explanation offered for mother's positive amphetamine test other than that she had amphetamines in her system. Based on the results of mother's drug testing since the twins' births, their counsel argued that the court should either dismiss the count against mother or, in the alternative, "conform [the pleadings] to proof striking the language that mother is a current user since the eight tests that we have show otherwise and just leave a history of illicit drug use." Mother's counsel asked the court to dismiss the count, asserting that mother had been clean for a year and that there was no indication that she would relapse.

After striking the language "and is a current abuser of amphetamine," the juvenile court sustained count b-1 against mother, citing the following reasons: "One, because [she] has a six-year history. She's had prior relapses. She's only been clean a year. She's

lost numerous children to the system because of her drug program and they are currently not in her care. She's currently in a program. . . . [¶] And the court does have a positive drug test, and she's associated with someone who is currently abusing drugs, [father]. So based on all those things the court's concern is without services she could not properly and safely parent these children." The court also sustained count b-2 against father, based on his positive test for amphetamine and methamphetamine.

The court declared the twins dependents, and ordered them placed with mother. The court ordered mother to complete her drug treatment program with random testing, to participate in parenting classes and individual counseling, and to comply with the conditions of her probation. The court set a review hearing for July 23, 2012.

Mother timely filed a notice of appeal from the court's jurisdictional findings.

DISCUSSION

Section 300, subdivision (b), provides that a child "is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court" if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's . . . substance abuse. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) 'Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300' at the jurisdiction hearing. (§ 355, subd. (a).) 'On appeal, the "substantial evidence" test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]' (*In*

re J.K. (2009) 174 Cal.App.4th 1426, 1433.)" (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

"Thus, 'we must uphold the court's [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.)' (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)" (*In re J.N., supra*, 181 Cal.App.4th at p. 1022.)

Mother relies on *In re David M.* (2005) 134 Cal.App.4th 822 and *In re James R.* (2009) 176 Cal.App.4th 129 to argue that a jurisdictional finding may not be based solely on a history of substance abuse; rather, there must be a causal connection between the past drug history and the risk of future harm to the minor. In *In re David M., supra*, the appellate court reversed a jurisdictional order because evidence of the parents' mental health issues and the mother's substance abuse problems were not tied to any actual harm or substantial risk of harm to their child. (*Id.* at pp. 825-829.) The court noted that the record contained no evidence that the parents' mental health issues impacted their ability to provide a decent home, as the child was healthy, well cared for, and loved, and his parents were raising him in a clean, tidy home. (*Id.* at p. 830.) In *In re James R., supra*, the mother had a negative reaction to consuming prescription ibuprofen and beer. She also had a history of mental instability, but there was no evidence that she abused drugs or was regularly intoxicated and unable to care for her children. The evidence indicated that the father was able to protect and supervise the children, and there was no evidence that he would leave them alone with mother while she drank. Because the risk of harm to the children was speculative, the *James R.* court reversed the jurisdictional findings under section 300, subdivision (b).

Mother maintains that "[t]he only evidence the Department had to support the allegation against mother was a positive drug test for amphetamines at the time mother gave birth to the twins – that is it." She further argues that the positive test for

amphetamine was not evidence that she had used methamphetamine around the time of the twins' births. However, methamphetamine, as its name suggests, contains amphetamine. While some testing laboratories apparently test for amphetamines *and* methamphetamine and report the results separately under the heading "Amphetamine," the hospital's lab apparently did not. Consequently, the inference which mother wishes us to draw, that the drug test was evidence that she had ingested amphetamine but not methamphetamine, is not sound.

Moreover, the court did not base its jurisdictional finding solely on a single positive drug test. Rather, the court noted that mother had a six-year history of methamphetamine abuse, had twice relapsed after successfully completing drug treatment programs, had been drug-free for just a year by her own account (and for less than six as demonstrated by the objective evidence of random drug tests), had not yet finished her court-ordered treatment program, and continued to associate with father, a known drug user.

In short, mother's commitment to addressing her substance abuse problems since her arrest for possession of methamphetamine in January 2011 is positive, encouraging and admirable. Her brief return to drugs at the time of the twins' births is hopefully but a hiccup on the road to full recovery. Substantial evidence supports the juvenile court's assumption of jurisdiction in this case.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.